

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAVID W. COLLOM,

Plaintiff-Appellee,

v

INDUCTOHEAT, INC., a/k/a INDUCTOHEAT,

Defendant-Appellant.

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UNPUBLISHED

March 28, 2000

No. 209658

Macomb Circuit Court

LC No. 97-001504-CL

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendant appeals by leave granted the order denying its motion for summary disposition in this employment discrimination action. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action under the Civil Rights Act, MCL 37.2202; MSA 3.548(202), alleging that he was discriminated against because of his age. Plaintiff alleged that he was improperly demoted from a position as an engineer at defendant's Romeo plant to a machine builder at defendant's Madison Heights plant. He alleged that defendant transferred a younger machine builder from the Madison Heights plant to the Romeo plant instead of plaintiff.

Defendant moved for summary disposition, asserting that the transfer and reclassification were for legitimate, non-discriminatory reasons. Defendant supported its motion with affidavits and plaintiff's deposition testimony. In response, plaintiff asserted that he established a prima facie case, and defendant failed to establish a legitimate business purpose. The trial court denied the motion, finding that there was a question of fact for trial.

To establish a prima facie case of discrimination, plaintiff must prove by a preponderance of the evidence that he was a member of a protected class, he suffered an adverse employment action, he was qualified for the position, and that he was demoted under circumstances that give rise to an inference of unlawful discrimination. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 173; 579 NW2d 906 (1998). In response to a prima facie case, defendant must set forth through admissible evidence, legitimate reasons for plaintiff's rejection. Once defendant produces such evidence, the presumption of

discrimination presented by the prima facie case drops away, and the burden shifts back to plaintiff. *Id.*, 174. At this stage, disproof of an employer's articulated reason for the adverse employment decision defeats summary disposition only if such disproof also raises a triable issue that discriminatory animus was a motivating factor in the employer's decision. *Id.*, 175. In the context of summary disposition, a plaintiff must prove discrimination with admissible evidence sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action. *Id.*, 176.

In the case before us, plaintiff has failed to present any evidence to meet his burden of proof. Therefore, the trial court erred in denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). *Id.*

Reversed and remanded for entry of summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Kurtis T. Wilder  
/s/ David H. Sawyer  
/s/ Jane E. Markey